

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3662 OF 2013
WITH
CIVIL APPLICATION NO. 8888 OF 2013

VISHWAJIT @ SACHIN ARJUNRAO HAJARE
VERSUS
SUSHMA VISHWAJIT @ SACHIN HAJARE

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Advocate for Petitioner : Mr. Jadhav N. L. and Gopal Sopanrao Niras
Advocate for Respondent : Mr. H.V. Tungar
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CORAM : V. K. JADHAV, J.
DATED : 2nd NOVEMBER, 2017

PER COURT:-

1. Being aggrieved by the order dated 19.3.2013 passed by the learned C.J.S.D. Gangakhed, District Parbhani, below Exh.52 in H.M.P. No. 16 of 2011, the petitioner/husband has preferred this writ petition.

2. Brief facts giving rise to the present writ petition are as under:-

The petitioner husband has filed H.M.P. bearing No. 16 of 2011 under Section 13 of Hindu Marriage Act for decree of divorce against the respondent wife. During pendency of said H.M.P., the respondent wife has filed an application Exh.52 contending therein that the petitioner husband has not deposited the entire amount of interim maintenance due to the respondent wife and further the

petitioner husband has not impleaded one Shri Milind Gondane, the alleged adulterer as party respondent. The learned C.J.S.D. Gangakhed, by its impugned order below Exh.52, allowed the application with costs and dismissed the H.M.P.. Hence, this writ petition.

3. Learned counsel for the petitioner submits that in terms of Rule 5 of Hindu Marriage Divorce Rules 1955 (Bombay High Court Rules) though adulterer is necessary party, learned Judge of the trial court has dismissed the entire H.M.P. on the ground that the adulterer was not impleaded as party respondent to the petition. Learned counsel submits that in the said Rules, there is no provision about consequences of failing to implead the adulterer as party and as such, in terms of Order I Rule 10, sub Rule (2) of C.P.C. the adulterer can be impleaded as party respondent at any stage to the proceeding or on an application of either of the parties.

4. Learned counsel for the respondent wife submits that in terms of the said Rules of 1955, the adulterer is necessary party and therefore, the respondent wife has filed an application Exh.52 raising objection to that effect. The learned Judge of the trial court has rightly placed reliance on the judgment of Kerala High Court in the case of ***Soya vs. A.K. Mohanan, reported in AIR (KER) 2006 0 56***

wherein the Kerala High Court has dismissed the marriage petition. Learned counsel submits that the Kerala High Court's Rules are similar to the Rules framed by Bombay High Court. Learned counsel submits that even the petitioner husband has not paid interim maintenance amount due to the respondent wife.

5. It appears that the learned Judge of the trial court has dismissed the H.M.P. Only on the ground that the adulterer was not impleaded as party respondent though he is necessary party. In terms of provision of Order I Rule 10, Sub Rule (2) of C.P.C. the court may at any stage of the proceeding, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order to implead any person as party, whose presence before the court may be necessary in order to enable the court, effectively and completely, to adjudicate upon and settle all the questions involved in the suit. In the instant case, the primary litigation is between the husband and wife and since the allegations have been made against the third party, the aforesaid Rules have been framed with a view that such allegations should not be dealt with by the court in absence of the party against whom serious allegations have been made in the petition. It is therefore, fit case to invoke the powers under Order I Rule 10, Sub-Rule (2) of C.P.C. to add the said adulterer as party respondent and I do not approve the

impugned order dismissing the entire petition on this ground alone.

6. So far as the non payment of interim maintenance amount is concerned, the respondent wife is at liberty to take recourse to the other provisions, including the execution of said order and also filing of application before the Court of not proceeding with the petition till the interim maintenance amount is deposited before the Court.

7. In view of above, I proceed to pass the following order:-

O R D E R

- I. The writ petition is hereby partly allowed.
- II. The order dated 19.3.2013 passed below Exh.52 in H.M.P. No. 16 of 2011 by Civil Judge, Senior Division, Gangakhed is hereby quashed and set aside and the application Exh.52 is hereby dismissed.
- III. The Hindu Marriage Petition is restored to its original number.
- IV. The petitioner husband shall file an application for impleading the adulterer as party respondent to the H.M.P. No. 16 of 2011

and the trial court shall pass appropriate order in terms of provisions of Order I, Rule 10 Sub Rule (2) of C.P.C.

V. Writ petition is accordingly disposed of.

VI. In view of disposal of writ petition, civil application No. 8888 of 2013 is also disposed of.

(V. K. JADHAV, J.)

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